

Findings of Fact

Chapter 42.03 Striped Bass – Closed Area and Closed Season (Kennebec River and Sheepscot River)

The Department of Marine Resources (DMR) initiated rulemaking to consider proposed changes to Chapter 42.03 of the Department's rules. The Recreational Fishing Alliance (RFA) requested the proposed rulemaking to open the Kennebec River to bait fishing with circle hooks during May and June. The DMR initiated this process to gather public opinion on removing bait restrictions within the defined spawning area and changing the current bounds of the defined spawning area. A public hearing was held at Bath City Hall on April 4, 2011. The deadline for written comments was April 14, 2011. Having considered the proposed changes, public comment, and the provisions in Amendment 6 of the Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Fisheries Management Plan, DMR finds the following and declines to pursue the proposed rule amendments at this time:

It is DMR's intent to conserve existing local spawning populations of native striped bass in the Kennebec River, maintain current levels of exploitation on coastal migrants, avoid increases in total mortality of striped bass, and continue to work cooperatively with all member states of the Atlantic State Marine Fisheries Commission to address the Department's concerns of declining striped bass stocks coastwide, including poor recruitment of striped bass in Chesapeake Bay and continued decline of small striped bass recruiting into the Maine striped bass fishery since 2007. It is also DMR's intent to continue to work toward developing consistent rules on use of circle hooks statewide for Maine's recreational striped bass fishery. After DMR published these draft rules, the ASMFC began a process to develop Addendum III to the Striped Bass Fishery Management Plan that could lower mortality by 40% coastwide. DMR is obligated by law to pursue fishing management policies consistent with any outcomes of Addendum III, which if passed could be implemented prior to the start of the 2012 fishing season.

Increased Access:

Increased fishing effort on native and migratory striped bass population will occur if the proposed rule changes are adopted. This increased effort would be the result of participation in the fishery by individuals fishing from shore, boats, guides operating in formerly closed portions of the spawning area and latent effort that would become active once the rule changes occurred. Estimates of increased effort are supported by testimony at the public hearing and written comments submitted by proponents and opponents of the proposed rule changes. Increased effort that results in additional mortality on striped bass is not consistent with actions proposed in Addendum III to Amendment 6 of the Striped Bass Management Plan, or with the Department's commitment to address the decline of striped bass statewide.

Native Striped bass historical status:

There is little information on the size, age structure, distribution, and mortality rates of adult spawning striped bass during the spawning season, May – June, in Maine. There are however, several historical references and documents that discuss the distribution and location of winter fisheries on striped bass in the Sheepscot, Kennebec, Eastern, Androscoggin, and Dyer rivers. These documents provide historical evidence that spawning populations over-wintered in Maine waters. These documents provide, in some instances, sex, length, and weight information. Most of the data results from incidental and directed catches of striped bass in commercial fisheries. (Atkins, 1887)

From 1982 – 1991, with the exception of 1987, DMR undertook an effort to restore populations of striped bass to the Kennebec River. This restoration effort resulted in increased catches of juvenile striped bass that were the offspring from these early stocking efforts. Sampling efforts on the Eastern River resulted in two one-day-old larval striped bass caught during June. Subsequent genetic analysis of juvenile striped bass collected from the Kennebec River in 1994 indicated that juvenile striped bass captured in the Kennebec River were significantly different from all stocks to which they were compared. (Mitochondrial DNA Analysis of Kennebec River Striped Bass, Isaac Wirgin, Institute of Environmental Medicine)

Local guides, commercial fishermen and DMR personnel report catching ripe running male striped bass in the Kennebec River and lower estuary over the past several years. The presence of striped bass in the Eastern River in April was reported by a commercial sucker fisherman in 2009. During November 22 – 23, 1993, 698 juvenile young of the year overwintering striped bass were captured in the lower Kennebec River, indicating that habitat use by spawning striped bass and their offspring is widespread. There have been no attempts to locate adult or juvenile wintering areas for striped bass outside the Kennebec River. Current juvenile striped bass survey index values remain low, though juvenile striped bass were captured most years from 1987 to present. The 2006 sample season produced 225 young-of-the-year striped bass, the largest number captured in the data series. DMR did not capture any juvenile striped bass in the 2010 Juvenile Index Survey (JAI).

Population Size:

Maine has seen a decline in recreational catches of striped bass in the past five years. Lower catch rates coastwide is an indication that this resource is declining. The lack of the slot-limit-size (striped bass 20 – 26 inches) reported captured in Maine indicates that several year classes of migratory and native striped bass are not observed within their historic ranges or in numbers observed in past years.

DMR voiced these concerns to the ASMFC in December 2010, asking that the ASMFC take steps to reduce overall mortality of striped bass coastwide. DMR initiated an independent management action that bans “J” and treble style hooks in conjunction with bait beginning January 1, 2013 to provide additional conservation for all striped bass in Maine waters and balance economic concerns of fishermen and tackle shop owners.

The proposed regulation is not consistent with the previous conservation efforts adopted by DMR to address the decline of striped bass. The proposed regulation will increase the exploitation of populations of striped bass in Maine waters by eliminating sections of the current spawning closure, opening sections of the existing spawning area to baited “J” hooks, and allowing harvest of striped bass within the current spawning closure.

The ASMFC has not identified any single cause for the decline. A number of factors are responsible, including disease, poor water quality in spawning areas, and overfishing. Current research on *Mycobacteriosis* shows that this is an issue in the spawning areas of the Chesapeake, the source of striped bass for most of Maine’s recreational fishing opportunities. Recently the National Marine Fisheries Service (NMFS) changed the recreational fisheries statistics survey program to address omissions in the previous program. This is important because the data collected from the Marine Recreational Fisheries Statistics Survey (MRFSS) program is the data used for the striped bass assessment. Striped bass population declines observed in the Northeast may be an indication of the true population size of striped bass. A new population assessment run will occur this summer for the data series 2003 – 2010.

ASMFC issues:

On March 4, 2011 in a memo to Mr. Eric C. Schwaab (NMFS) from the Director of the Office of Science and Technology, Mr. Ned Cyr, recommended that MRFSS survey data be reexamined for bias from the period 2003 to present. DMR received a copy of the memo on April 6, 2011. The ASMFC used the MRFSS data to estimate population size and spawning abundance during the period 2003 – 2010. The ASMFC Stock Assessment Sub-Committee plans to address this issue to determine the implications to current ASMFC estimates of striped bass population size, spawning biomass, and recruitment.

As required by Amendment 6 to the ASMFC's Striped Bass Management Plan (Plan), proposed changes to Maine's current striped bass management plan that are less restrictive or that may impact local spawning populations, must be submitted to the ASMFC and approved prior to any change taking effect. The process to bring these changes before ASMFC is outlined in the Plan (sections 4.6 and 4.6.1). Implementing less restrictive rule changes, without prior ASMFC review, would cause the State of Maine to be out of compliance with the ASMFC Striped Bass Management Plan. Sections 4.6 and 4.6.1 are reproduced below:

4.6 ALTERNATIVE STATE MANAGEMENT REGIMES

Once approved by the Atlantic Striped Bass Management Board, a state may not relax its regulatory program without the approval of the Board, except that more restrictive measures can be implemented by states without Board approval. A state can request a change only if that state can demonstrate to the Board's satisfaction that the action will not contribute to the overfishing of the resource. All changes in state plans must be submitted in writing to the Board.

4.6.1 General Procedures

A state may submit a proposal for a change to its regulatory program or any mandatory compliance measure under this amendment to the Commission, including a proposal for de minimus status. Such changes shall be submitted to the Chair of the Plan Review Team, who shall distribute the proposal to the Management Board, the Plan Review Team, the Technical Committee, the Stock Assessment Sub-committee, and the Advisory Panel. The Plan Review Team is responsible for gathering the comments of the Technical Committee, the Stock Assessment Sub-committee, and the Advisory Panel, and presenting these comments as soon as possible to the Management Board for decision. The Atlantic Striped Bass Management Board will decide whether to approve the state proposal for an alternative management program if it determines that it is consistent with the management program detailed in this Amendment.

Gear types:

The striped bass mortality rate used by the ASMFC is derived from Mortality of Striped Bass Hook and Release in Salt Water by Paul Diodati and Anne Richards and is in *Transactions of the American Fisheries Society* 125:300-307, 1996. This study assessed a number of gear types and other factors to estimate hook and release mortality of striped bass. Circle hooks were not included in this study. Though the ASMFC uses an average mortality rate (~8%) from this study to estimate mortality for recreational catch and release fishing, the ASMFC does not endorse the 8% hook and release mortality rate as an indication of acceptable levels of hook and release mortality by gear type.

The change in the geographic area in the proposed rule would open existing closed spawning areas to baited "J" hooks and baited treble hooks which researchers have documented to have high

mortality rates for deeply hooked striped bass. The majority of the early coastal migrants to Maine during May and June are female striped bass. The proposed rule would permit fishermen to target both mature and immature female striped bass entering the area currently designated to protect the spawning population of striped bass, including native and coastal migrants. Impacts on coastal migrant and resident striped bass can be extremely high. Maine ranked third in 2005 and 2006 in numbers of recreational caught striped bass at 3.09 and 4.13 million respectively. During the period 2003 through 2009 Maine ranked fifth in numbers of recreationally caught striped bass out of the eleven states required to report landings.

Impacts to the female population of striped bass by recreational anglers using baited treble and “J” hooks that result in deep hooking wounds is inconsistent with current management strategies to protect spawning striped bass in Maine. The proposed rule is also in direct conflict with management efforts adopted by the state in 2010 to implement circle hook regulations statewide in 2013 to lower mortality of all striped bass statewide. Implementing circle hook requirements where bait fishing is not currently allowed (spawning areas) would increase mortality because no such fishery currently exists during the May to June spawning season. Draft Addendum III to the Striped Bass Management Plan may require additional restrictions to fishing in designated spawning areas prior to 2012 (ASMFC News Release, March 24, 2011).